*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.81 of 2007

% Dated 26-12-2007

Gajbinkar Arjun & another.

Petitioners

VERSUS

$ Siddipet Municipality, rep., by its Commissioner, Siddipet, Medak District & others.

Respondents

! Counsel for the Petitioners: Sri M. Rama Rao

^Counsel for the Respondents: Sri Polisetty Radhakrishna
SC for Municipalities

<GIST:

> HEAD NOTE:

? Cases referred

1. (2004) 3 SCC 711
2. AIR 2000 SC 573
3. AIR 1990 Kerala 169
4. AIR 1953 Bombay 145

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 81 of 1997

Date: 26.12.2007

Between:

Gajbinkar Arjun & another.

... Petitioners

AND

Siddipet Municipality, rep., by its
Commissioner, Siddipet,
Medak District & others.

... Respondents

Counsel for the petitioners : Sri M. Rama Rao

Counsel for the respondents: Sri Polisetty Radhakrishna
SC for Municipalities

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 81 of 1997

ORDER:-

This writ petition is filed for a writ of mandamus to declare the action of the respondents in seeking to take steps to raise commercial complex on the land admeasuring Ac.00.29 guntas and 40 square yards comprised in Sy.No.1825 of Siddipet Town, Medak District, without acquiring the same under the provisions of the Land Acquisition Act, 1894 (for short, 'the Act') and paying compensation to the petitioners, as arbitrary, illegal and violative of Article 300-A of the Constitution of India. The petitioners also sought for grant of consequential benefits.

Briefly stated, the facts are as follows:

An extent of Ac.00.29 guntas 40 square yards in Sy.No.1825 of Siddipet Town has been in possession of respondent No.1 – Municipality (for short, 'the Municipality'). The petitioners claim to have entered into an agreement of sale with Sri Gattupalli Bhadraiah and Sri Gattupalli Shankaraiah, who are the sons of Gattupalli Nagamallaiah, the original owner of the land, on 20.10.1990. They further averred that the said vendors filed Writ Petition 3164 of 1991 for a writ of mandamus to direct the respondents to initiate land acquisition proceedings for payment of compensation to them and that as they already executed the

agreement of sale and colluded with the municipality, they are not taking interest in the said litigation. A reference to resolution passed by the Municipality in the year 1953 and case No.1/19/1953 is made to show that the land was a private property belonging to the vendors of the petitioner under the alleged agreement of sale. It is further averred that on 30.12.1996, the municipality passed resolution to construct commercial complex and that if the same is constructed the third party rights will creep in. With these averments, the petitioners filed the present writ petition.

The Chairman of the Municipality, respondent No.2, filed a counter-affidavit in which he questioned the locus standi of the petitioners to maintain this writ petition. He claimed that the Municipality is the absolute owner of the said land and that it not being a party to the agreement of sale, the same is not binding on it. He has further averred that the petitioners can only seek specific performance of the said agreement if they so choose and they cannot maintain this writ petition. It is also averred that the Municipality, which was formed in the year 1950, developed the said land into municipal park in the year 1951 and since then it is in possession of the property over which no one has claimed any right. It is also averred that Gattupalli Bhadraiah and Gattupalli Shankaraiah filed Writ Petition No.3164 of 1991 against the Municipality for a direction to it to initiate proceedings under the Act for payment of compensation and that later they filed affidavit on 11.07.1995 before the Municipal Council, Siddipet declaring that the said land belongs to the Municipality and that they were also withdrawing the said writ petition.

Respondent No.2 further stated that the Government has allotted funds for implementing the scheme known as “Integrated

Development of Small and Medium Towns" and under that scheme the Municipal Council vide resolution dated 15.11.1991 decided to construct a shopping complex adjacent to the children's park and that construction is going on. It is also stated that there is no record available in the Municipality to show that the land in question belongs to any private individual.

Petitioner No.1 filed a reply affidavit, wherein he stated that when the land belongs to private persons, unless it is alienated legally in favour of the Municipality, mere giving of an affidavit without effecting legal transfer would not create right in the Municipality and that the said affidavit will not take away the vested rights of the agreement holders.

Sri M. Rama Rao, learned counsel for the petitioners contended that with the execution of agreement of sale in favour of the petitioners by the original owners, the provisions of Section 55(6)(b) of the Transfer of Property Act, 1882 (for short, 'the 1882 Act') come into play. He further contended that the statutory charge created by the said provision is different from contractual charge, which the buyer may become entitled to under the terms of the contract and that under the said statutory charge the buyer is entitled to enforce the charge against the property.

Learned counsel relied upon proceedings dated 22.12.1954 A.D. in Dis.No.1082, case No.1/19/1953, wherein a notice was addressed to Sri Gattupalli Nagamallaiah and the said notice reads as under:

"FAIMAYASH (NOTICE) ISSUED FROM THE OFFICE OF MUNICIPALITY, SIDDIPET DISTRICT, MEDAK DISTRICT, DATED 22nd DECEMBER, 1954 A.D.

Dis.No.1082 Case.No.1/19/1953.

To
Sri Gattapally Naga Mallaiah, R/o. Siddipet.

Sub:- With regard to give the land Sy.No.1826 for garden of Siddipet Town.

***

With reference of your application dated 3rd December, 1954, hereby a Faimayash (Notice) issued that, the said land as per your request it can not be given to you according to the decision of District Collector, but the compensation amount which is to be fixed, the same in net cash or by way of land will be return in your favour, the same is selected in respect of extension of population.

Hence, you are hereby directed to give the reply within two weeks to the office so that we will decide the said matter.

Copy of the same notice be taken and the original shall be returned after duly signed.

Sd/- In English.
Executive Officer.
Dt. 21.12.1954.

// True Copy //

Sd/-
K. Muthiam Reddy,
Dt. 06.03.1967."

Learned counsel also invited my attention to the purported proceedings dated 29.10.1960 of the office of the 'Majus' Siddipet, wherein it is mentioned as under:

"It was settled that to issue the compensation of garden land of Municipality, Siddipet at the last meeting. Now it is postponed. It will submit again for order in next time.

Sd/-

Meer Majus Municipality

After the arguments we came on that conclusion and settled this matter that the dispute of the garden lands has taken under the Municipality in the year 1952, to give

the similar land as an exchange to them.

Sd/-

Meer Majus of Municipality."

Learned counsel submitted that since the petitioners stepped into the shoes of the original owners, they are entitled to maintain the writ petition and justified in seeking the relief as claimed in the writ petition.

Learned Standing Counsel for the Municipality re-iterated the averments contained in the counter-affidavit filed by respondent No.2 and contended that the petitioners have no locus standi to maintain the writ petition and that they are not entitled to claim any relief against the Municipality.

Before dealing with the contentions raised by the petitioners, it is relevant to note that they have not filed along with the writ petition, either the purported agreement of sale in original or a copy of it said to have been executed by the GPA holder Mr. M.R. Shankar on behalf of the landlords.

However, the record shows that at a later point of time, a xerox copy of a document styled as "Agreement of Sale" said to have been executed on 20.12.1990 by Gattupalli Bhadraiah and Gattupalli Shankaraiah in favour of the petitioners was filed as additional material paper. It is interesting to notice that the said document does not contain the signatures of any of the parties to the purported agreement. Gattupalli Shankaraiah was impleaded as respondent No.5 to the writ petition and the application filed by the petitioners to bring on record the legal representatives of the deceased respondent No.5 as respondent Nos.6 to 8 was allowed by this Court by order dated 05.04.2007. None of them entered appearance and filed any affidavit either supporting or opposing the case of the petitioners.

In their pleadings, the petitioners failed to explain their failure to file the original agreement of sale. As already noted, even the copy of the alleged agreement of sale does not contain any signatures of any of the parties. I am therefore of the view that the petitioners, even prima facie, failed to prove that an agreement was, in fact, entered into by the alleged original owners with them agreeing to sell the land in their favour. By the mere Ipsi Dixit of the petitioners that they entered into an agreement of sale with the alleged original owners and in the absence of any proof in support thereof, this Court cannot presume existence of any such agreement and grant relief to them even if it accepts the contention advanced by the learned counsel for the petitioners that the buyer under an agreement of sale has a statutory charge over the properties covered by it.

Since the petitioners failed to prove existence of the agreement of sale, ordinarily, no further question needs to be considered at all. However, as the learned counsel for the petitioners advanced legal contentions, irrespective of the above finding, this Court seeks to examine the same.

Chapter III of the 1882 Act deals with Sales of Immovable Property. Section 54 of the Act defines 'Sale' as transfer of ownership in exchange for a price paid or promised or part paid or part promised. It is further envisaged by the said provision that such a transfer, in the case of tangible immovable property of the value of Rs.100/- and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Significantly, the said provision described a contract for the sale of immovable property as a contract that a sale of such property shall take place on terms settled between the parties and that *"it does not, of itself, create any interest in or*

charge on such property".

Section 55 of the 1882 Act prescribed Rights and Liabilities of the buyer and seller and sub-Section 6 of Section 55 reads as under:

> "(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.
>
> (b) unless he has improperly declined to accept delivery of the property, **to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money** properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission." (emphasis added)

The scope of Section 55 (6) of the 1882 Act fell for consideration of the Supreme Court in **Videocon Properties Limited v. Dr. Bhalchandra Laboratories and others**[1] on which the learned counsel for the petitioners placed heavy reliance. In that case, the plaintiffs entered into an agreement with the defendants for buying the landed property of the defendants and paid certain amounts towards earnest money. The said agreement was terminated by the plaintiffs and they filed a suit seeking several reliefs and one such relief was for refund of the earnest money deposit along with interest. The learned Single Judge of the High Court, who decided the case, decreed the suit in respect of the said relief and the Division Bench reversed the same. While allowing the appeal filed by the plaintiffs, the Supreme Court *inter alia* held as under:

“The buyer's charge engrafted in clause (b) of sub-section 6 of Section 55 of the Transfer of Property Act would extend and ensure to the purchase money or earnest money paid before the title passes and property has been delivered by the seller to the purchaser, on the seller's interest in the property unless the purchaser has improperly declined to accept delivery of property or when he properly declines to accept delivery - including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 55 (4) (b). Consequently, the buyer is entitled to enforce the said charge against the properly and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceeding against the substituted security, since none claiming under the seller including a third party purchaser can take advantage of any plea based even on want of notice of the charge. The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of the purchaser's own default or his improper refusal to accept delivery. So far as payment of interest is concerned, the section specifically envisages payment of interest upon the purchase money/price prepaid, though not so specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simpliciter, as mere security for due performance does not become repayable till the contract or agreement

> got terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted."

I fail to understand how this judgment would, in any manner, help the petitioners. As seen from the facts narrated and the ratio contained in the above re-produced paragraph, the case decided by the Supreme Court was between the vendor and the vendee under an agreement of sale and the decree claimed by the plaintiffs was for recovery of the earnest money. While holding that the plaintiffs have got a statutory charge over the earnest money, the Supreme Court observed that the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceedings against the substituted security. This judgment cannot be relied upon as laying down a proposition that a vendee under an agreement of sale is entitled to claim compensation for the property against a third party. The said judgment would apply to the petitioners only in a case where they seek refund of the alleged purchase money or the earnest money deposit, if any paid under the agreement of sale in a suit filed by them against the vendors under the agreement of sale.

Similarly, the judgment in **Delhi Development Authority v. Skipper Constructions Company (P) Limited and others**[2], which is also to the similar effect, has no application whatsoever to the case of the petitioners.

The judgments in **Meppallipoyil Ibravi v. Poolakkandiyil Pokkam and others**[3] and **Jibhaoo Harisingh Rajput v. Ajab**

Singh Fakira Rajput[4] relied on by the learned counsel for the petitioners have no relevance whatsoever to the facts of this case.

As could be seen from Section 54 of the 1882 Act referred to above, the alleged agreement of sale does not by itself create any interest in or charge over the property in dispute in favour of the petitioners. Even the statutory charge envisaged in Section 55 (6) (b) cannot be pressed in to service for claiming compensation against a third party, who is not claiming its right over the property through the alleged owner. At any rate, as laid down in **Videocon Properties Limited (1 supra)** the statutory charge is confined to the refund of the earnest money/sale consideration in a case where proceedings are instituted against the vendor on the foot of an agreement of sale. This statutory charge does not enable a vendor under an agreement of sale to sue a third party to recover the value of the property.

Since a reference to Writ Petition No.3164 of 1991 is contained both in the affidavit filed in support of the writ petition and the counter-affidavit filed by respondent No.2, I have summoned the order passed in the said writ petition. The said writ petition was filed by Gattupalli Bhadraiah and Gattupalli Shankaraiah and the same was dismissed by this Court on 05.08.2002 with the following observations:

> "Curiously, there is a serious dispute with regard to title of the land in question. The relief sought for in the present writ petition cannot be granted at this length of time. Taking into consideration the submissions on either side and having perused the record, it is evident that the petitioners have made a claim to give back the land in question, however the same is rejected. On the other hand, the third respondent assured that compensation would be paid. However, the affidavit is silent as to the steps taken. The petitioner can as well

take recourse to file appropriate proceedings before competent Civil Court in that regard. In that view of the matter, especially as there is serious dispute with regard to the title, this Court is restrained to go into the merits of the case while exercising jurisdiction under Article 226 of the Constitution."

It is thus clear from the order of this Court in the aforementioned writ petition that even the so called original owners, who allegedly executed the agreement of sale in favour of the petitioners, were un-successful in their claim for compensation against the Municipality and they were relegated to file a civil suit for claiming compensation. Even assuming that the petitioners are the holders of the agreement, they cannot claim better title or right than the alleged original owners can. Therefore, the purported proceedings dated 21.12.1954 and proceedings dated 29.10.1960 do not in any manner advance the case of the petitioners.

For all the aforementioned reasons, the petitioners failed to convince this Court that they have any semblance of legal right either to maintain this writ petition or to claim any of the reliefs as sought for in this writ petition.

For the aforementioned reasons, the writ petition fails and is accordingly dismissed.

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C.V.NAGARJUNA REDDY, J

Date: 26.12.2007
ES

LR to be marked.

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[1] (2004) 3 SCC 711
[2] AIR 2000 SC 573
[3] AIR 1990 Kerala 169
[4] AIR 1953 Bombay 145